



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9858]

RIN 1545-BO38

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that amend regulations relating to imposing user fees for enrolled agents and enrolled retirement plan agents. The final regulations remove the initial enrollment user fee for enrolled retirement plan agents because the IRS no longer offers initial enrollment as an enrolled retirement plan agent. The final regulations also increase the amount of the renewal user fee for enrolled retirement plan agents from \$30 to \$67. In addition, the final regulations increase the amount of both the enrollment and renewal user fee for enrolled agents from \$30 to \$67. The final regulations affect individuals who are, or apply to become, enrolled agents and individuals who are enrolled retirement plan agents. The Independent Offices Appropriations Act of 1952 authorizes charging user fees.

DATES: Effective date: This regulation is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For the dates of applicability, see §§300.5(d), 300.6(d), and 300.10(d).

FOR FURTHER INFORMATION CONTACT: Mark Shurtliff at (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 300 regarding user fees.

A. User Fee Authority and Enrolled Agent and Enrolled Retirement Plan Agent

User Fees

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing a charge for services the agency provides (user fees). The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. Under the IOAA, user fee regulations are subject to policies prescribed by the President. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A-25, 58 FR 38142 (July 15, 1993).

Under OMB Circular A-25, Federal agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing the special benefit. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services, review user fees biennially, and update them as necessary. Section 330(a)(1) of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department). Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in

31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Section 10.3 of Circular 230 defines who may practice before the IRS and includes individuals who have been granted enrollment to practice as enrolled agents and enrolled retirement plan agents. Section 10.4 of Circular 230 authorizes the IRS to grant enrollment as an enrolled agent or enrolled retirement plan agent to individuals who demonstrate special competence in tax matters by passing a written examination administered by, or under the oversight of, the IRS and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Section 10.4 also authorizes the IRS to grant enrollment as an enrolled agent or an enrolled retirement plan agent to a qualifying former IRS employee by virtue of past IRS service and technical experience if the former employee has not engaged in any conduct that would justify suspension or disbarment under the provisions of Circular 230 and meets certain other requirements. The ability to practice before the IRS is a special benefit that is conferred on enrolled agents and enrolled retirement plan agents that does not accrue to the general public.

Once eligible for enrollment as an enrolled agent, whether by examination or former employment with the IRS, an individual must file an application for enrollment with the IRS and pay a \$30 nonrefundable user fee. To maintain active enrollment and eligibility to practice before the IRS, an individual who has been enrolled as an enrolled agent or enrolled retirement plan agent must file an application to renew enrollment every three years and pay a \$30 nonrefundable user fee. 31 CFR 10.6(d).

As required by the IOAA and OMB Circular A-25, the IRS Return Preparer Office (RPO) completed its 2017 biennial review of the enrollment and renewal user fees

associated with enrolled agents and enrolled retirement plan agents. As discussed in section B of this preamble, during its review the RPO took into account the increase in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled agents and enrolled retirement plan agents since the user fee was last changed in 2011. In addition, RPO determined that costs associated with Federal tax-compliance checks and suitability checks on enrolled individuals should be recovered as part of the user fee for administering the enrollment and renewal programs. The 2017 biennial review also took into account new costs associated with administering the program for enrolled agents and enrolled retirement plan agents, including the costs of operating a dedicated toll-free helpline in the RPO for enrollment and renewal matters.

B. Calculation of the User Fee

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering the program for enrollment or renewal. GAAP is established by the Financial Accounting Standards Board (FASB). Recognition of costs is based on Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, issued by the Federal Accounting Standard Advisory Board (FASAB). The FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, is available at https://files.fasab.gov/pdf/2018_fasab_handbook.pdf.

1. Cost Center Allocation

The IRS determines the cost of its services and activities using a cost-accounting system that tracks costs to organizational units. The lowest organizational unit in the

IRS's cost-accounting system is a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. Costs of operating a cost center are recorded in the IRS's cost-accounting system. Costs of user fees include direct costs, such as labor, and indirect costs. Indirect costs are not easily traceable and are allocated using a method or by applying an overhead rate.

2. Determining the Per Unit Cost

To establish the per-unit cost, the total cost of providing the service is divided by the volume of services provided.

3. Cost Estimation of Direct Labor

Not all cost centers are fully devoted to one service for which the IRS charges user fees. Some cost centers work on a number of different services across the IRS. In these cases, the IRS uses various cost-measurement techniques to estimate the cost incurred in those cost centers attributable to the program. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a program. Once the IRS has estimated the average time required to accomplish an activity, it multiplies that time estimate by the relevant organizational unit's average labor and benefits cost per unit of time to determine the labor and benefits cost incurred to provide the service. To determine the full cost, IRS then adds overhead as discussed below.

4. Overhead

Overhead is an indirect cost of operating an organization that cannot be

immediately associated with an activity that the organization performs. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and supporting organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants and equipment.
- Publication, reproduction, and graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a service, the IRS multiplies a Corporate Overhead rate by the labor and benefits costs determined as discussed previously. The IRS calculates the Corporate Overhead rate annually based on cost elements underlying the Statement of Net Cost included in the IRS Annual Financial Statements, which are audited by the Government Accountability Office. The Corporate Overhead rate is the ratio of the sum of the IRS's indirect labor and benefits costs from the supporting and sustaining organizational units—those that do not interact directly with

taxpayers—and all non-labor costs to the IRS’s labor and benefits costs of its organizational units that interact directly with taxpayers.

The Corporate Overhead rate of 68.00 percent for costs reviewed during FY 2017 was calculated based on FY 2016 costs (which are assumed to be fixed and reoccurring) as follows:

Indirect Labor and Benefits Costs		\$1,681,373,747
Non-Labor Costs	+	<u>\$2,879,907,032</u>
Total Indirect Costs		\$4,561,280,779
Direct Labor and Benefits Costs	÷	<u>\$6,708,063,559</u>
Corporate Overhead Rate		<u>68.00%</u>

5. Calculation of the Per Unit Cost of the User Fee

The IRS used projections for fiscal years 2018 through 2020 to determine the direct costs associated with enrolled agent enrollment and renewal and enrolled retirement plan agent renewal. Direct costs are incurred by the RPO and include labor costs for enrollment and renewal submission processing; tax compliance and background checks; continuing education and testing-related activities; and communications, which include the new toll-free helpline.

The labor and benefits for the work performed related to administering the program for enrolled agent enrollment and renewal and enrolled retirement plan agent renewal is projected to be \$2,708,603 in total over fiscal years 2018 through 2020. The labor and benefits costs include the cost to perform background checks and tax compliance checks, which are services that were not included in the previous \$30 user fee. The number of enrollment and renewal applications is based on the FY2016

numbers adjusted by the anticipated increase in enrollment. Adding Corporate Overhead expenses to the total labor and benefits results in total costs of \$4,550,453 as shown below:

Labor and Benefits	\$2,708,603
Corporate Overhead (68%)	<u>\$1,841,850</u>
Labor, Benefits, and Overhead	\$4,550,453

Dividing this total cost by the projected population of initial enrollment and renewal applications for fiscal years 2018 through 2020 results in a cost per application of \$67 as shown below:

Labor, Benefits and Overhead	\$4,550,453
Number of Applications	÷ <u>68,343</u>
Cost Per Application	<u>\$ 67</u>

Taking into account the full amount of these costs, the RPO determined that the full cost of administering the program for enrolled agents and enrolled retirement plan agents has increased from \$30 to \$67 per application for enrollment or renewal. The user fee complies with the directive in OMB Circular A-25 to recover the full cost of providing a service that confers special benefits on identifiable recipients beyond those accruing to the general public.

C. Notice of Proposed Rulemaking and Final Regulations

On November 19, 2018, a notice of proposed rulemaking (REG-122898-17) proposing to amend the regulations relating to imposing user fees for enrolled agents and retirement plan agents was published in the **Federal Register** (83 FR 58202). The document proposed removing the initial enrollment user fee for enrolled retirement plan

agents because the IRS no longer offers initial enrollment as an enrolled retirement plan agent.

The document also proposed increasing the amount of the renewal user fee for enrolled retirement plan agents from \$30 to \$67. In addition, the document proposed increasing the amount of both the enrollment and renewal user fees for enrolled agents from \$30 to \$67. The notice of proposed rulemaking contains a detailed explanation regarding the amendments to these regulations.

Two comments responding to the notice of proposed rulemaking were received. A public hearing on the notice of proposed rulemaking was scheduled for January 24, 2019. As stated in the notice of proposed rulemaking, requests to speak and outlines of topics to be discussed at the hearing were required to be submitted by January 18, 2019. On January 22, 2019, the public hearing was cancelled due to a lapse in appropriations (IR-2019-05). Because no requests to speak at the hearing had been received, the hearing was not rescheduled. After consideration of the comments, this Treasury Decision adopts the regulations proposed by the notice of proposed rulemaking without change.

Summary of Comments

Two comments were submitted on the notice of proposed rulemaking. The comments are available at www.regulations.gov or upon request.

One of the comments agreed with the proposed user fee regulations because the commenter's status as an enrolled agent allows him to earn income by representing taxpayers before the IRS. The comment stated that the commenter supported the increase, so long as the user fees comply with the relevant authorities. As discussed in

the background section of this preamble, the IOAA authorizes each agency to promulgate regulations that impose user fees for services the agency provides to identifiable recipients. User fee regulations under the IOAA are subject to policies prescribed by the President, which are set forth in OMB Circular A-25. As described in the background section of this preamble, the Treasury Department and IRS complied with the requirements of the IOAA and OMB Circular A-25 in promulgating these regulations. The notice of proposed rulemaking and the background section of this preamble provide a detailed analysis of how the RPO determined the full cost of providing services to enrolled agents and enrolled retirement plan agents (83 FR 58202). Accordingly, the user fee complies with the relevant authorities.

The other comment generally disagreed with enrollment and renewal user fees associated with enrolled agents and enrolled retirement plan agents. The comment stated that the Federal government should bear the full cost of administering programs related to tax professionals. This comment was not accepted because it is contrary to the policies prescribed by the President as set forth in OMB Circular A-25. Accordingly, the proposed regulations are adopted without change.

Special Analyses

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

OIRA has determined that this regulation is significant and subject to review under section 6(b) of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The user fee primarily affects individuals who are enrolled agents, apply to become enrolled agents, or are enrolled retirement plan agents. Only individuals, not businesses, can be enrolled agents or enrolled retirement plan agents. Thus, any economic impact of the user fee on small entities generally will occur only when an enrolled agent or enrolled retirement plan agent owns a small business or when a small business employs enrolled agents or enrolled retirement plan agents and reimburses them for their renewal fees. The Treasury Department and IRS estimate that approximately 22,781 individuals will apply annually for enrollment as an enrolled agent, renewal as an enrolled agent, or renewal as an enrolled retirement plan agent. Due to the relatively small number of small businesses that employ enrolled agents or enrolled retirement plan agents, a substantial number of small entities are not likely to be affected. Further, the economic impact on any small entities affected would be limited to paying the \$37 difference in cost between the \$67 user fee and the previous \$30 user fee for each enrolled agent or enrolled retirement plan agent that a small entity employs and reimburses, or otherwise pays for, the cost of the user fee. The total economic impact of this regulation is thus approximately \$842,897 annually, which is the product of the approximately 22,781 individuals and the \$37 increase in the fee which is not a significant economic impact. Accordingly, it is certified that the rule will not have a significant economic impact on a substantial number of small entities.

It is not anticipated that the increase in user fee that is paid every three years and averages to \$12.33 per year will negatively affect enrollment, which has historically remained steady as user fee amounts have changed. Pursuant to section 7805(f), the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business (83 FR 58202). No comments on the notice of proposed rulemaking were received from the Chief Counsel for Advocacy of the Small Business Administration.

Drafting Information

The principal author of these regulations is Mark Shurtliff of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300--USER FEES

Paragraph. 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

§300.0 [Amended]

Par. 2. Section 300.0 is amended by removing paragraph (b)(10) and redesignating paragraphs (b)(11) through (13) as paragraphs (b)(10) through (12).

Par. 3. Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

* * * * *

(b) Fee. The fee for initially enrolling as an enrolled agent with the IRS is \$67.

* * * * *

(d) Applicability date. This section applies beginning **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Par. 4. Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

(b) Fee. The fee for renewal of enrollment as an enrolled agent with the IRS is \$67.

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(d) Applicability date. This section applies beginning **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

§300.10 [Removed]

Par. 5. Section 300.10 is removed.

§300.11 [Redesignated as §300.10 and Amended]

Par. 6. Redesignate §300.11 as §300.10 and amend newly redesignated §300.10 by revising paragraphs (b) and (d) to read as follows:

§300.10 Renewal of enrollment of enrolled retirement plan agent fee.

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(b) Fee. The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS is \$67.

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(d) Applicability date. This section applies beginning **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

§§ 300.12 and 300.13 [Redesignated as §§ 300.11 and 300.12]

Par. 7. Redesignate §§300.12 and 300.13 as §§300.11 and 300.12.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: April 19, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019-09732 Filed: 5/10/2019 8:45 am; Publication Date: 5/13/2019]